

**Subject: Vendor Sanction System – Federal Mandated Violations**

Effective Date: October 1, 2014

**Policy:** Kansas WIC vendors determined to be in violation of WIC program federal regulations shall be sanctioned as indicated below.

Vendor violations may be intentional or unintentional. The Kansas WIC program may refer vendors who commit fraud and/or abuse of the WIC program to federal, state or local authorities for prosecution under applicable statutes.

The Kansas WIC program detects violations through monitoring, undercover buys, data analysis and reports from WIC clients and Local Agencies (LA). Vendors who commit fraud and abuse may be prosecuted under federal, state and local laws and may be fined or imprisoned in addition to program sanctions.

Imposed sanctions may include warning letters, mandatory training sessions, administrative fines, monetary claims, Civil Money Penalties (CMP), suspensions, terminations or disqualifications or any combination of sanctions.

**Procedure:** Federal Regulations **7CFR § 246.12** require mandatory sanctions be imposed for violations listed in this section and also require that a pattern of incidences of a violation be established before imposing a mandatory sanction for violations number 4, 5, 6, 7, 8 and 9 listed below. A pattern of incidences is established with 3 consecutive violations of the same incident.

The State Agency will send the vendor a single warning letter after the first incidence of a violation for violations number 4, 5, 6, 7 and 8 listed below. Additional compliance buys may be conducted after the warning letter is sent. The State Agency will not send any additional warning letters for subsequent incidences of violations number 4, 5, 6, 7 and 8 listed below prior to imposing the mandatory sanction. (No warning letter will be sent for violation number 9 and 10).

If the State Agency determines that disqualification of the vendor would result in inadequate client access, a CMP may be imposed in lieu of disqualification for the violations numbered 2, 3, 4, 5, 6, 7, 8, 9 and 10 listed below.

<b>Violation</b>	<b>Number of incidences of the violation which will result in the indicated sanction</b>	<b>Sanction and length of disqualification</b>
1. Vendors <u>convicted</u> of trafficking in WIC checks or selling firearms, ammunition, explosives, or controlled substances [as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)] in exchange for WIC checks.	One	Termination of contract and permanent disqualification

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<b>Violation</b>	<b>Number of incidences of the violation which will result in the indicated sanction</b>	<b>Sanction and length of disqualification</b>
2. a. Buying or selling WIC checks for cash (trafficking); or  b. Selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)) in exchange for WIC checks.	One	Termination of contract and six (6) year disqualification
3. The sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC checks.	One	Termination of contract and three (3) year disqualification
4. Charging the WIC program more for supplemental foods than non-WIC customers or charging the WIC program more than the current shelf price.	Three	Termination of contract and three (3) year disqualification
5. Charging the WIC program for supplemental food not received by the client.	Three	Termination of contract and three (3) year disqualification
6. Receiving, transacting and/or redeeming WIC checks outside of authorized channels, including the use of an unauthorized vendor and/or unauthorized person	Three	Termination of contract and three (3) year disqualification
7. Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C § 802), in exchange for WIC checks.	Three	Termination of contract and three (3) year disqualification
8. Providing unauthorized food items in exchange for WIC checks, including charging for supplemental food provided in excess of those listed on the WIC check.	Three	Termination of contract and one (1) year disqualification

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<b>Violation</b>	<b>Number of incidences of the violation which will result in the indicated sanction</b>	<b>Sanction and length of disqualification</b>
9. Claiming reimbursement for the sale of an amount of specific supplemental food item, which exceeds the stores documented inventory of that supplemental food item for a specific period of time. Each month that a vendor claimed reimbursement for the sale of a specific supplemental food item, which exceeded the vendor's documented inventory of that supplemental food item, shall constitute an incidence of a violation.	Three	Termination of contract and three (3) year disqualification
10. Vendors who have been disqualified from the Kansas Food Assistance Program shall be disqualified from the WIC Program. The disqualification shall be for the same length of time as the Kansas Food Assistance Program disqualification and may begin at a later date than the Kansas Food Assistance Program disqualification. The disqualification is not subject to administrative or judicial reviews under the WIC Program		

## 1. Multiple Violations during a Single Investigation

1. If the State Agency determines during the course of a single investigation a vendor has committed multiple violations, which may include violations subject to SA sanctions or federally mandated sanctions, the vendor shall be sanctioned for the most serious violation.

## 2. Civil Money Penalty

- a. If the SA determines that disqualification of a vendor would result in inadequate client access, a civil money penalty will be imposed. The civil money penalty amount shall be determined by using the formula in USDA Federal Regulations **7 C.F.R. § 246.12 (l) (1) (x)**. The formula is as follows:

Step I: Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately prior to the month during which the notification of violation is dated.

Step II: Multiply the average monthly redemptions figure by 10% (.10).

Step III: Multiply the product of Step II by the number of months for which the vendor would have been disqualified.

For example, if a vendor were issued a sanction of 6 months disqualification in July, the State Agency would compile the average monthly redemption for the

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months of January through June. The average monthly redemption would then be multiplied by 10%. That figure would be multiplied by 6 (for the 6 month disqualification period).

Vendor A averages \$5,000 for the months February through July so  $\$5,000 \times 10\% = \$500$ . Then  $\$500 \times 6 = \$3,000.00$ . This is the amount of the civil money penalty if the vendor cannot be disqualified due to client access.

The result of Step III is the civil money penalty imposed. A civil money penalty shall not exceed \$11,000 for each violation.

If the SA determines during the course of a single investigation that a vendor has committed multiple violations; the SA must impose a civil money penalty for each violation.

The total amount of civil money penalties for violations investigated as part of a single investigation shall not exceed \$49,000.

A civil money penalty shall not be imposed in lieu of disqualification for a third or subsequent sanction for violation listed in Mandatory Sanctions under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, 9, and 10.

Vendors that have been convicted of trafficking (Mandatory Sanctions under Federal Regulations - Item 1) in WIC checks or selling firearms, ammunition, explosives or controlled substances in exchange for WIC checks will be permanently disqualified from the WIC program. A civil money penalty in lieu of disqualification will be considered if disqualification of the vendor would result in inadequate client access or that the vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

If a vendor does not pay, partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the SA must disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most severe violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

- b. Money received by the SA as a result of civil money penalties or fines assessed against a vendor or any interest charged in the collection of these penalties and fines shall be considered as program income. As program income, these monies will be used to support WIC program objectives.

### 3. Second Mandatory Sanction

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- a. A vendor who previously has been assessed a sanction for violations listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, and 9 and if the vendor receives another sanction for any of these violations, the second sanction will be doubled.

**4. Third or Subsequent Mandatory Sanction**

- a. A vendor who previously has been assessed two or more sanctions for violations listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, and 9 and if the vendor receives another sanction for any of these violations, the third sanction and all subsequent sanctions will be doubled.

**5. Effective Date of Sanctions against Vendors**

- a. The State agency must make denials of authorization and disqualifications effective on the date of receipt of the notice of adverse action. The State Agency must make all other adverse actions effective no earlier than 15 days after the date of the notice of adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to fair hearing, no later than the date the vendor receives the review decision.